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COSTCO WHOLESALE CORPORATION
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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 RHODA PAUL,

13
14 Plaintiff,

15 vs.

16
17 COSTCO WHOLESALE CORPORATION;
and DOES 1 to 20,
18 Defendants.
19
20

Case No. 4:21-cv-03645-DMR

**ANSWER TO COMPLAINT BY
DEFENDANT COSTCO WHOLESALE
CORPORATION**

DEMAND FOR JURY TRIAL

21 Defendant Costco Wholesale Corporation (“Costco”) answers the California Judicial
22 Council Form Complaint (“Complaint”) brought by plaintiff Rhoda Paul (“Plaintiff”) and alleges
23 as follows:

24 **RESPONSE TO ALLEGATIONS OF COMPLAINT**

25 Answering all causes of action pled by the above-named Plaintiff, Costco denies, both
26 generally and specifically, every material allegation, including the damage allegations, in every
27 cause of action alleged.

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1 1. In response to Paragraph 1 of the Complaint, Costco admits that Rhoda Paul is the
2 plaintiff and that Costco is the defendant in this action.

3 2. In response to Paragraph 2 of the Complaint, Costco admits that the Complaint
4 appears to consist of four pages.

5 3. In response to Paragraph 3 of the Complaint, Costco cannot admit or deny the
6 absent allegations.

7 4. In response to Paragraph 4 of the Complaint, Costco cannot admit or deny the
8 absent allegations.

9 5. In response to Paragraph 5 of the Complaint, Costco admits that it is a corporation.

10 6. In response to Paragraph 6 of the Complaint, Costco lacks sufficient information in
11 which to admit or deny the allegations.

12 7. In response to Paragraph 7 of the Complaint, Costco cannot admit or deny the
13 absent allegations.

14 8. In response to Paragraph 8 of the Complaint, Costco denies that the Superior Court
15 in and for the County of Alameda, California is the proper court for hearing this action. Costco
16 has removed the action to the United States District Court for the Northern District of California,
17 Oakland Division, because of the diversity of citizenship of the parties.

18 9. In response to Paragraph 9 of the Complaint, Costco cannot admit or deny the
19 absent allegations.

20 10. In response to Paragraph 10 of the Complaint, Costco admits that Plaintiff has
21 attached to its pleading and asserted a California Judicial Council form cause of action for general
22 negligence. Costco denies the allegations of each such cause of action.

23 11. In response to Paragraph 11 of the Complaint, Costco lacks information sufficient
24 to admit or deny the allegations.

25 12. In response to Paragraph 12 of the Complaint, Costco cannot admit or deny the
26 absent allegations.

27 13. In response to Paragraph 13 of the Complaint, Costco admits that the relief sought
28 is within the jurisdiction of both this Court and the underlying state court.

1 14. In response to Paragraph 14 of the Complaint, Costco denies that Plaintiff is
2 entitled to the relief prayed for.

3 15. In response to Paragraph 15 of the Complaint, Costco cannot admit or deny the
4 absent allegations.

5 16. In response to Paragraph GN-1 (General Negligence Liability Cause of Action) of
6 the Complaint, Costco admits that plaintiff Rhoda Paul was shopping at Costco on April 13, 2019
7 and admits that she was involved in an incident where she came into contact with a Costco
8 shopping cart. Costco further admits that Plaintiff submitted a member report of the incident the
9 same day, claiming that her arm and shoulder hurt. Costco lacks sufficient information whether
10 Plaintiff was injured or, if so, whether her injuries were severe and/or traumatic and on such basis
11 denies the allegations. Costco denies that it breached a duty of care owed to Plaintiff. Costco
12 further denies that it was a substantial factor in causing Plaintiff's alleged injuries. Costco further
13 denies that it negligently trained or supervised its unnamed employee.

14 **AFFIRMATIVE DEFENSES**

15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State a Claim for Relief)**

17 The Complaint, and each cause of action therein, fails to state a claim upon which relief
18 may be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 **(Contributory Negligence)**

21 Costco is informed and believes and thereon alleges that Plaintiff was careless and
22 negligent about the matters complained of and that such carelessness and negligence contributed
23 to the happening of the incident complained of, and the damages, if any, sustained thereby.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Statute of Limitations)**

26 The Complaint, and each cause of action therein, is barred by the applicable statute of
27 limitations, to wit, by the provisions of California Code of Civil Procedure sections 335 *et seq.*

FOURTH AFFIRMATIVE DEFENSE**(Laches)**

The Complaint, and each cause of action therein, is barred by the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE**(Waiver and Estoppel)**

The Complaint, and each cause of action therein, is barred by the doctrines of waiver and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE**(Failure to Mitigate Damages)**

Plaintiff has failed to mitigate her alleged damages.

SEVENTH AFFIRMATIVE DEFENSE**(Workers' Compensation)**

Costco is informed and believes and thereon alleges that Plaintiff may have been injured in the course and scope of her employment and her employer's negligence caused and/or contributed to her damages/injuries. Insofar as she was acting within the course and scope of employment, her exclusive remedy is before the Workers' Compensation Appeals Board, this Court having no jurisdiction to determine this matter.

EIGHTH AFFIRMATIVE DEFENSE**(Assumption of the Risk)**

Costco is informed and believes and thereon alleges that Plaintiff, with full appreciation of the particular risks involved, nevertheless knowingly and voluntarily assumed the risks and hazards of the incident complained of, and the damages, if any, resulting therefrom.

NINTH AFFIRMATIVE DEFENSE**(Third Party Fault)**

Costco is informed and believes and thereon alleges that Plaintiff's injuries were caused or contributed to by third parties in a percentage to be determined at trial and that Plaintiff's recovery of non-economic damages shall be reduced in proportion to such third parties' percentage of fault.

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1 WHEREFORE, Costco prays that Plaintiff take nothing by reason of her Complaint on file
2 herein, that Costco be awarded costs of suit herein incurred, and for such other and further relief as
3 may be deemed appropriate by this Court.

4 **JURY TRIAL DEMAND**

5 Defendant Costco hereby demands a trial by jury. *Fed.R.Civ.P. 38.*

6 Dated: May 18, 2021

CASEY LAW GROUP

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8 By: 

9 DONALD P. GAGLIARDI

10 Attorneys for Defendant

11 COSTCO WHOLESALE CORPORATION
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ATTORNEYS AT LAW